

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

EDNA GARCIA-DIPINI,

Plaintiff,

vs.

LARRY PITT & ASSOCIATES,

Defendant.

CIVIL ACTION

NO. 21-CV-02186-RAL

**DEFENDANT, LARRY PITT & ASSOCIATES' MOTION FOR SANCTIONS**

Defendant, Larry Pitt & Associates, by and through its attorneys Marks, O'Neill, O'Brien, Doherty & Kelly, P.C., hereby submit the within Motion for Sanctions and avers as follows:

1. Plaintiff Edna Garcia-Dipini initiated this action in May 2021, against Defendant Larry Pitt & Associates alleging her termination was based on retaliation for a request for a reasonable accommodation under the American with Disabilities Act and because she was Hispanic.

2. On July 29, 2021, Defendants set its first set of Interrogatories and Requests for Production of Documents ("RFPD") to Plaintiff.

3. On August 20, 2021, Defendant sent its supplemental Interrogatories and RFPD to Plaintiff.

4. On September 14, 2021, Plaintiff provided her responses to Defendant's first set of Interrogatories and RFPD, however, Plaintiff's responses were incomplete and deficient.

5. Plaintiff never responded to Defendant's supplemental Interrogatories and RFPD.

6. Defendant made multiple attempts to contact Plaintiff regarding the outstanding and incomplete discovery responses with the final attempt occurring on March 9, 2022, to no avail.

See Emails to Plaintiff's former counsel requesting outstanding discovery attached hereto as Exhibit "A"; Letter to Plaintiff requesting outstanding discovery attached hereto as Exhibit "B".

7. Consequently, Defendant was forced to file a Motion to Compel Discovery Responses Directed Toward Plaintiff on March 15, 2022. (Doc. 36).

8. Thereafter, on March 31, 2022, the Court granted Defendant's Motion to Compel Plaintiff's discovery responses, ordering Plaintiff to respond to Defendant's discovery responses within ten (10) days. The Court's order also provides that Plaintiff would suffer sanctions if she failed to comply. (Doc. 37).

9. Despite a court order, compelling Plaintiff to respond to Defendant's outstanding discovery requests and provide complete responses to the identified deficiencies in Plaintiff's responses to Defendant's first set of RFPD, Plaintiff has neither objected, nor answered said discovery.

10. Federal Rule of Civil Procedure 37(b) permits the court to impose sanctions for a party's failure to comply with a court order. FED. R. CIV. P. 37(b)(2)(A).

11. Sanctions may include any of the orders listed in Rule 37(b)(2)(A)(i)-(vii); further, the court can require the party failing to act pay reasonable expenses, including attorney fees caused by the failure, unless the failure was substantially justified or other circumstances make the award of expenses unjust.

12. In relevant part, pursuant to 37(b)(2)(A), the Court can impose the following sanctions for Plaintiffs' failure to respond to Defendant's discovery requests:

(i) directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims;

(ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;

(v) dismissing the action or proceeding in whole or in part

(vi) rendering a default judgment against the disobedient party

13. In light of Plaintiff's failure to respond to Defendant's discovery requests as ordered by the Court, sanctions are an appropriate remedy.

14. Specifically, Defendant requests that Plaintiff be prevented from using any of the evidence that would be responsive to Defendant's discovery request in the following manner:

- a. to defend against Defendant's assertions in its Counterclaim;
- b. to respond to a dispositive motion; or
- c. to support Plaintiff's claims for wrongful termination, discrimination and retaliation at the time of trial.

15. Defendant further requests that it be accepted as true that Plaintiff failed to mitigate any potential damages because she failed to provide documents showing efforts to obtain employment or income following her separation from Defendant.

**WHEREFORE**, Defendant, Larry Pitt & Associates, respectfully request this Honorable Court enter an Order in the form attached hereto and Grant Defendant's Motion for Sanctions

Respectfully submitted,

**MARKS, O'NEILL, O'BRIEN,  
DOHERTY & KELLY, P.C.**

/s/ Patricia A. Fecile-Moreland

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